

907 KAR 1:075. Hearings and appeals for individuals with an intellectual disability.

RELATES TO: KRS 205.175, 205.231, 205.237, 210.270

STATUTORY AUTHORITY: KRS 194A.025(1), 194A.050(1), 205.231, 205.237, 42 C.F.R. 431 Subpart E, 42 U.S.C. 1396, EO 2004-726

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services has responsibility to provide for a system of hearings to be available to Medicaid recipients. This administrative regulation is promulgated to satisfy the hearing requirement of KRS 205.231 and 210.270 relative to Medicaid-eligible individuals with an intellectual disability lodged in state institutions who are proposed by the cabinet to be reclassified and transferred. In accordance with KRS 205.237, the cabinet is also setting the maximum fees that may be charged the recipient for representation by attorneys with regard to the hearings or further resultant appeals.

Section 1. Definitions. (1) "Authorized representative" means a parent, guardian or committee of the recipient; or an attorney acting at the request of the parent, guardian or committee of the recipient; or an attorney acting on behalf of the recipient; or a representative of the facility caring for the recipient who is acting on behalf of the recipient.

(2) "Recipient" means an individual with an intellectual disability, lodged in a state institution, who is eligible for Medicaid benefits and is having the cost of his care paid for using funds from the Medicaid Program.

(3) The phrase "at the time of any action affecting his claim," means at the time that the cabinet proposes to reclassify the level of care of a recipient (as defined in subsection (2) of this section) or to transfer such recipient from the state institution in which he is lodged.

Section 2. Informing the Recipient of His Rights. Each recipient and his parent, guardian or committee shall be informed in writing at the time of any action affecting his claim of his right to a hearing, the method by which he may obtain a hearing and that he may be represented by an authorized representative, such as legal counsel, relative, friend or other spokesman, or he may represent himself. All federal notice requirements

Section 3. Request for a Hearing. Any recipient, or an authorized representative acting on his behalf, may request a hearing by filing with either the local office or central office of the Department for Social Insurance a written or oral statement clearly indicating a desire for a hearing. If the request for a hearing is made orally, the oral request shall be reduced to writing within ten (10) days by the person requesting the hearing, with the written request provided to the same office of the Department for Social Insurance which accepted the oral request.

Section 4. Time Limitation for Request. The time limitation for a hearing request is shown in KRS 210.270.

Section 5. Continuation of Benefits. When the request for a hearing of a decision to reclassify or transfer any patient with an intellectual disability is received within the thirty (30) day period, provided for by KRS 210.270, Medicaid reimbursement shall continue, and the recipient shall not be transferred, until the conclusion of the hearing.

Section 6. Acknowledgment of Hearing Requests by the Appeal Panel. The acknowledgment letter shall contain information regarding the hearing process, including the right to case record review

prior to the hearing and the right to representation. Subsequent notification shall include the time and place where the hearing will be held.

Section 7. Withdrawal or Dismissal of Request. The recipient, or his authorized representative, may withdraw his request for a hearing at any time prior to release of the appeal panel's decision, provided, however, he (or his authorized representative) is granted the opportunity to discuss withdrawal with his legal counsel or representative, if any, prior to finalizing the action. A hearing request shall be dismissed if the recipient fails without prior notification to report for the hearing, except that no hearing request shall be dismissed without extending to the recipient, or his authorized representative, the opportunity to establish that the failure was for good cause.

Section 8. Recipient's Rights Prior to a Hearing. All recipients and their parents, guardians or committees shall be informed of their right to legal counsel or other representation, of the right to case record review relating to the issue and of the right to submit additional information in support of the claim. When the hearing involves medical issues, a medical assessment by other than the person or persons involved in the original decision shall be obtained at cabinet expense if the appeal panel considers it necessary. The medical assessment may be requested by the recipient or his authorized representative, or by an appeal panel member, and shall be considered necessary by the appeal panel if in the opinion of a majority of the members of the appeal panel the available medical information is insufficient for the appeal panel's purposes of determining whether the recipient should be reclassified or transferred. If a medical assessment at cabinet expense is requested by the recipient and denied by the appeal panel the reason for denial shall be set forth in writing.

Section 9. Corrective Action. If after a review of the case record, but prior to scheduling a hearing, the chairman of the appeal panel determines that action taken or proposed to be taken, is incorrect, he shall authorize corrective action in the form of continuing assistance or eligibility. The hearing request shall then be dismissed, subject to reinstatement at the request of the recipient or his authorized representative if that individual feels the corrective action does not fully resolve the issues prompting the hearing request. The request for reinstatement must be made within twenty (20) days of the notice of the corrective action.

Section 10. Conduct of a Hearing. Hearings and appeals relating to decisions to reclassify or transfer persons with an intellectual disability in state institutions shall be in accordance with the requirements contained in 42 CFR 431 Subpart E, dated November 1, 1991, herein incorporated by reference, and KRS 210.270. A copy of the incorporated material shall be available for review during regular working hours in the commissioner's office, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601 from 8 a.m. through 4:30 p.m. Eastern Time, Monday through Friday. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

(1) All hearing officers of the Cabinet for Health and Family Services Administrative Hearings Branch are designated as the representatives of the Secretary, Cabinet for Health and Family Services, to the appeal panel established in KRS 210.270.

(2) The hearing officers shall serve as the chairman of each appeal panel established in KRS 210.270, and as chairman will conduct the proceedings of the appeal panel and make any and all rulings on procedural matters at, before, or after the hearing.

(3) The chairman of the appeal panel is, pursuant to the authority of KRS 194.025, delegated the authority to administer oaths and affirmations, examine witnesses and parties who appear at the hearing, and issue subpoenas to compel the attendance of any witness or the production of books, papers, correspondence, memoranda and other records which he feels are necessary and relevant

for determining the proper level of care of the patient or whether the patient should be transferred.

(4) The chairman of the appeal panel may, at his discretion, direct or grant a continuance of a hearing in order to secure necessary evidence.

(5) All members of the appeal panel shall be required to maintain the confidentiality of the hearings, records, reports and all other documents and safeguard all information relating to the patients and their parents, guardians and committees in accordance with KRS 194.060 and 205.175.

(6) The chairman of the appeal panel shall be responsible for maintaining the official records of a patient's case before the appeal panel, receiving a notice of appeal, acknowledging the appeal, taking and recording the vote of the appeal panel and notifying the parent, guardian or committee of the decision.

(7) Following the hearing the chairman of the appeal panel shall take the vote of the appeal panel and assign to himself or any other member of the appeal panel the task of writing the decision.

(8) The decision of the appeal panel shall be in writing, include a finding of facts, identify laws and administrative regulations which support the decision, be sent to the appealing party within ninety (90) days from the date of the request for the hearing, and advise the parent, guardian or committee of the right to appeal the decision in the manner prescribed by KRS 210.270.

(9) The recipient, his representative and any other party to the hearing may present evidence pertinent to the issue on which the adverse action was, or is proposed to be, taken, and advance any arguments without undue interference.

(10) The chairman and other members of the appeal panel shall, if necessary to secure full information on the issue, examine each party who appears and his witnesses. The appeal panel may take any additional evidence which it deems necessary; but if additional evidence is taken, all interested parties shall be afforded the opportunity of examining or rebutting such additional evidence.

(11) The parties to the hearing, with the consent of the appeal panel, may stipulate the facts involved, in writing. The hearing may be decided on the basis of stipulation or the appeal panel may schedule a hearing and take additional evidence as is deemed necessary.

(12) All hearings shall be conducted informally and in a manner designed to determine the substantial rights of the parties. The parties and their witnesses shall testify under oath or affirmation. All facts relevant to the issue appealed shall be considered and passed upon.

Section 11. Hearings on other Issues. Hearings on issues other than patient reclassification, or transfer of a person with an intellectual disability in Medicaid reimbursement status in state institutions shall be conducted in accordance with the provisions of 904 KAR 2:055.

Section 12. Limitation of Fees. (1) The cabinet, and its officers and employees, either in their official or personal capacity, shall not be liable for payment of any attorney's fee. In accordance with KRS 205.237, the fee an attorney may charge an individual may not exceed the following:

(a) Seventy-five (75) dollars for preparation and appearance at the hearing before an appeal panel.

(b) \$175 for preparation and presentation, including pleadings and appearance in courts, of appeals to the Circuit Court;

(c) \$300 for preparatory work and briefs and all other matters incident to appeals to the Court of Appeals.

(d) \$300 for preparatory work and briefs and all other matters incident to appeals to the Supreme Court.

(2) The fee agreed to by the representative and his client within the above maximums shall be deemed to have the approval of the cabinet.

(3) Enforcement of payment of the fee shall be a matter entirely between the counsel or agent and the recipient. The fee shall not be deducted, either in whole or in part, from benefit checks which

may be due and payable to the recipient. (6 Ky.R. 487; eff. 4-1-1980; Recodified from 904 KAR 1:075, 5-2-1986; 18 Ky.R. 1629; eff.1-10-1992; TAm 7-16-2013.)